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No. 86-1030

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

COUNTY OF SANTA CLARA, Petitioner,

v.

JOE P. RAMIREZ, Respondent.

On Petition For A Writ Of Ceriorari To The United States Court Of Appeals For The Ninth Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Section 656(b) of 42 U.S.C. creates a definition of a debt not dischargeable in bankruptcy separate and independent from the definitions of debts deemed non-dischargeable in bankruptcy by section 523 of 11 U.S.C.

2. If Section 656(b) creates an independent and separate definition of a non-dischargeable debt, does a California debt for reimbursement of AFDC constitute "a debt which is a child support obligation assigned to the state" by the aid applicant or recipient, where California law holds that in the absence of a prior court order for support, a debt for reimbursement to the state for AFDC funds expended arises from statute and not from assignment from the aid-recipient parent or child.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Joe P. Ramirez, respectfully prays that Petitioner, County of Santa Clara's, Petition for writ of certiorari to review the judgment and opinion of the United Sates Court of Appeals for the Ninth Circuit entered on August 4, 1986, be denied.

OPINIONS BELOW, JURISDICTION, STATUTES INVOLVED AND STATEMENT OF THE CASE

Respondent concurs with Petitioner's statement of the Opinions Below,

Jurisdiction, Statutes Involved and Statement of the Case.

REASONS FOR DENYING THE WRIT

A. THE OPINION OF THE NINTH CIRCUIT DOES NOT CREATE A CONFLICT AMONG CIRCUIT COURT OPINIONS

There is no conflict between the Ninth Circuit opinion in this matter *[In re Joe P. Ramirez* 795 F.2d 1494 (9th Cir. 1986)] and the opinion of the Court of Appeals for the Seventh Circuit *In re Stovall* [721 F.2d 1133 (7th Cir. 1983)]. *Stovall* resolved the issue of whether an assignment to the state of child support debts pursuant to the Social Security Act by a parent receiving AFDC, includes rights to support payments which become due after the assignment as well as arrearages accrued at the time of the assignment. The Bankrupt-Appellant Stovall argued that "...all that is assigned pursuant to [42 U.S.C. § 602(a)(26)] are those sums which are in arrears at the time the aid recipient makes an assignment to the state agency." Id. at 1135. Thus, the Seventh Circuit focused on the issue of whether

the aid recipient's assignment was effective as to all rights to support which she acquired while on AFDC, or was limited to those rights which she or her child had at the time of the initial assignment.

The Seventh Circuit Court reviewed the Senate Finance Committee report on the bill implementing 42 U.S.C. § 656(b) and concluded "There is no expression of Congressional intent to limit the assignment to amounts in arrears at the time of the assignment." 721 F.2d at 1135. *Stovall* did not address the issue of the distinction between the statutory right of the state for reimbursement of aid, and the aid recipient's assigned right to collect support arrears accrued pursuant to a court order, so it cannot stand for the proposition that there is no such distinction.

The Ninth Circuit Court considered *Stovall* and rejected the contention, raised in Circuit Judge Ferguson's dissent, that *Stovall* addressed the same issue raised in *In re Joe P. Ramirez.* Thus, *Stovall* and the Ninth Circuit

opinion in this matter are not in conflict.

B. DISCHARGE IN BANKRUPTCY OF DEBTS TO THE STATE CREATED SOLELY BY STATUTE WHICH DO NOT ORIGINATE AS A DEBT TO THE MOTHER OR CHILD IS NOT CONTRARY TO LEGISLATIVE INTENT

Section 456(b) of the Social Security Act [42 U.S.C. 656(b)] was enacted in 1974, repealed in 1978 (P.L. 95-598 sec. 328), and reinstated by the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35 sec. 764). In enacting this section, Congress created a protection against bankruptcy for the benefit of the custodial parent, not the state. The Senate Committee Report, in its discussion of the creation of a debt for reimbursement for AFDC, stated that "...a provision has been included to assure that the *rights of the wife and child* are not discharged in bankruptcy merely because the support obligation is a debt to the State." S. Rep. No. 1356, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Cong. & Ad. News 8133, 8153(emphasis added).

Amendments consistent with the congressional intent to protect the wife and child were made in conjunction with the amendment to the Social Security Act re-enacting 656(b). The amendment of the section of the Bankruptcy Act which lists the exceptions to dischargeable debts left intact the requirement that to be non-dischargeable, the debt must be "...to a spouse, former spouse, or child of the debtor,...in connection with a separation agreement, divorce decree, or property settlement agreement...." United States code, Title 11, Section 523(a)(5). *See amendment in* Pub. L. No. 97-35, *reprinted in* 1981 U.S. Code Cong. & News 95 Stat. 357, 863.

The need for such protection for the custodial parent is obvious: if rights to accrued support are assigned to the state by a parent, and collection on the debt by the state exceeds the amount of AFDC paid to that parent, the balance belongs to the assignor. *See* S. Rep. No. 1356, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Cong. & Ad. News

8133, 8158. Without the exception to dischargeability in 523(a)(5), the assignor parent could loose the right to collect the amount in excess of reimbursement merely because the debt was assigned to the state; a loss which she would not have incurred had she not received AFDC.

However, when the debt never was one owed to the mother or child, but rather was a statutory right to reimbursement originating with and owned exclusively by the state, the debt is of an entirely different nature. The loss from its discharge in Bankruptcy is felt not by an individual, but is absorbed by the state. Moreover, although a secondary goal of the congressional support collection scheme is lowering welfare costs (*See* S. Rep. No. 1356, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Ad. News 8133, 8146), the loss of reimbursement through bankruptcy would be limited by the very nature of bankruptcy proceedings. Only a person of limited resources and one against whom a sizable debt to the state had

accumulated prior to a court order would benefit from the disruption and economic onus of bankruptcy. It is not the "...well-off doctors and lawyers whose families are forced into welfare..." (*Id.* at 8147) who would avail themselves of the bankruptcy proceeding, but rather a desperate debtor such as Respondent, for whom the liability to the state proves an overwhelming burden. Congress did not re-enact 656(b) to preclude discharge of the reimbursement debt in these limited cases, but rather to protect the meager assets of the aid recipients.

C. EQUITABLE CONSIDERATIONS DICTATE THAT A DEBT TO THE STATE CREATED WITHOUT BENEFIT OF A PRIOR COURT ORDER BE DISCHARGEABLE IN BANKRUPTCY

There is a marked difference, from the debtors viewpoint, between a debt which accrues pursuant to a prior court order, and a debt which accrues by operation of law pursuant to a statutory right granted the creditor. In the former instance, as with any court order, the debtor is given notice before

the creation of the obligation, is most likely aware of the significance of the court proceeding, and need only appear to provide easily accessible information regarding his current earnings and expenses.

Where the debt arises out of statute, the debt can accrue without the knowledge of the debtor. The custodial parent may obtain AFDC without notice to the other parent and, in fact, may have refused any financial support from the "absent parent" in conjunction with denying him access to his children. The absent parent may not even know the whereabouts of the "abandoned" custodial parent and children, let alone that he is accruing an obligation to the state. When a court finally determines the size of the debt for past support, the debtor may have to reconstruct years of information in regard to income and expenses and periods of illness or unemployment. He may be completely without resources to hire an attorney to represent him, while the creditor, the

state, has all of its powerful legal resources to further its cause.

The result can be what occurred in Respondent's case. At the time of filing his petition in bankruptcy, Respondent owned $1,317.00 worth of personal property; owed one secured debtor $563.00, his attorney $226.58, and his former wife $3,750.00 for child support accrued after the court order. He owed the County of Santa Clara $14,825.00. His total gross income for the two year period prior to filing the petition was less than $17,000.00. (DOC. NR. 28; ER 14; Pet. App. D at 8.) As the Bankruptcy Court and the Ninth Circuit pointed out, collection of the debt to the state would have only hampered Respondent's ability to meet his obligation to his children for current support. [(DOC. NR. 28; ER 14-15; Pet. App. D at 8) (795 F.2d at 1498-1499, Pet. App. A at 10-11.)]

CONCLUSION

The decision of the Court of Appeals in this matter creates no conflict among the circuit courts. Its

application is limited to those few parents, such as Respondent, who bankruptcy was designed to assist. It leaves intact the protection against bankruptcy for those debts for support owed to the aid recipient, whether assigned or not. Respondent respectfully urges the court to deny Petitioner's request that certiorari be granted.

Resectfully submitted,

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March 11, 1987